

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

John Benazzi,)	
)	C/A No.: 2:03-3432-MBS
Plaintiff,)	
)	
vs.)	
)	OPINION AND ORDER
Jo Anne B. Barnhart, Commissioner of)	
Social Security.)	
)	
Defendant.)	
_____)	

Plaintiff John Benazzi filed an application for disability insurance benefits on June 26, 2000, alleging disability from January 2, 2000 to January 1, 2004, because of coronary artery disease, hypertension, diabetes mellitus, and depression. The applications were denied initially and upon reconsideration. By decision dated June 28, 2002, an administrative law judge (“ALJ”) found Plaintiff to be “not disabled.” On appeal, the case was remanded for further consideration. A second hearing was held before an ALJ on September 22, 2004. On November 26, 2004, the ALJ issued a decision that Plaintiff was not entitled to a period of disability or disability insurance benefits under sections 216(i) and 223, respectively, of the Social Security Act. The decision of the ALJ became the final decision of the Commissioner on August 4, 2005, after the Appeals Council determined that there was no basis for assuming jurisdiction. Plaintiff thereafter brought the within action pursuant to 42 U.S.C. § 405(g), seeking judicial review of the “final decision” of the Commissioner.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Robert S. Carr for a Report and Recommendation. On May 31, 2006, the Magistrate Judge filed a Report and Recommendation in which he noted that it had come to his attention that Plaintiff had died on January 2, 2006, and that, despite notice, no party had filed a motion under Fed. R. Civ. P. 25 to be substituted as a party for Plaintiff. The Magistrate Judge

therefore recommended that the action be dismissed. No party filed objections to the Report and Recommendation.¹

The court is charged with making a *de novo* determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

After a thorough review of the Report and the record in this case, the court adopts the Report and Recommendation and incorporates it herein by reference. Accordingly,

It is ORDERED that the within action be dismissed, with prejudice.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

June 29, 2006.

¹ A letter apparently from Plaintiff's wife dated March 3, 2006 specifically requests the court to dismiss the case.